

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
LETTERS PATENT APPEAL No 727 of 1997

in

SPECIAL CIVIL APPLICATIONNO 4957 of 1997

For Approval and Signature:

AK MAKWANA

Versus

STATE OF GUJARAT

Appearance:

MR GAURANG H BHATT for Petitioner
SERVED BY DS for Respondent No. 1,15,16,17
MR DA BAMBHANIA for Respondent No. 2
MRS KETTY A MEHTA for Respondent No. 14

LETTERS PATENT APPEAL No 728 of 1997

in

SPECIAL CIVIL APPLICATIONNO 4958 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MF PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR GAURANG H BHATT for Petitioner
SERVED BY DS for Respondent No. 1,15,16,17,18
MRS KETTY A MEHTA for Respondent No. 12

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 28/08/97

ORAL JUDGEMENT (Coram: C.K.Thakker J.)

Admitted. Mr.Bambhaniya, learned Assistant Government Pleader appears and waives service of notice of admission. In the facts and circumstances of the case, both the matters have been taken up for final hearing to day.

These appeals are filed against interim order passed by the learned Single Judge refusing interim relief. The appellants were serving as Deputy Mamlatdar. By the impugned order dt. July 8, 1997 passed by the Collector, Banaskantha at Palanpur, respondent no.2 herein, they were reverted from the post of the Deputy Mamlatdar. By filing Special Civil Application Nos.4957 of 1997 and 4958 of 1997, the appellants have challenged their reversion. When the matters were placed for admission before the learned Single Judge, the learned Single Judge was pleased to issue notice but did not grant interim relief. On July 11, 1997, the following order was passed by the learned Single Judge.

"Notice to the respondents returnable on 1.8.1997. In the meantime petitioners shall have a liberty to move this Court for vacation of interim orders made in favour of the Deputy Mamlatdars juniors to the petitioners. Direct service is permitted."

Against the above order the present appeals are instituted. When the Letters Patent Appeals were placed for admission, we issued notice and also granted status quo in Civil Applications. To day we have heard the parties.

Mr.G.H.Bhatt, learned counsel for the appellants submitted that in the order impugned in the petitions, it is clearly and unequivocally stated that some persons

have approached this court by filing petitions against their reversion and they have been protected by this court and interim relief was granted against their reversion. Mr.Bhatt stated that looking to the seniority list, some of them are undisputedly junior to the present appellants. In the impugned order itself it is stated as under:

Sr.No. Name of Mamlatdars Sr.List Spl.C.A.No. Date of
No. interim
order.

1.	H.I.Pandya.	108	6907/91	27.9.91
2.	P.H.Parmar	116	6404/96	27.8.96
3.	P.D.Makwana	117	2868/90	31.3.90
4.	G.B.Malek	118	6907/91	27.9.91
5.	P.P.Parekh.	120	2868/91	31.3.90
6.	M.V.Joshi.	121	6907/91	27.9.91

Mr.Bhatt contended that from the above table, it is clear that the persons at Sr.Nos. 108, 116, 117, 118, 120 and 121 have been protected by this court. He also stated that the appellant of LPA No.727 of 1997 is at Sr.No.114 in the seniority list, whereas appellant of LPA No.728 of 1997 is at Sr.No.111. Thus, atleast 5 persons out of six referred to above are junior to the appellants who have been reverted, who have approached this court by filing petitions and they have been protected by this court and interim relief is operative. The above position has not been disputed by respondent authorities. Obviously, from the order itself it is clear that they are placed below in the seniority list.

Mr.Bhatt, in our opinion, rightly submitted that he has no grievance against the grant of relief by this court to the persons junior to them and hence the appellants are not interested to move the court for vacation of the interim orders made in their favour. He submitted that when this court has passed order and persons junior to them have been protected, the learned Single Judge ought not to have refused interim relief in favour of the present appellants. The submission is well founded and must be accepted. In our opinion, the learned Single Judge was not right in refusing interim relief.

For the foregoing reasons, the appeals deserve to be allowed and are accordingly allowed. Status quo granted earlier is to continue till the matters are decided by the learned Single Judge. The order passed by

the learned Single Judge refusing to grant interim relief is set aside. The matter will now go back to the learned Single Judge to decide the same in accordance with law. We may clarify that we have made above observations only for the purpose of disposing of this appeal which have been filed at the interlocutory stage and as and when the petitions would be taken up for hearing, the learned Single Judge will pass appropriate order in accordance with law.

Mr. Bambhaniya, learned Assistant Government Pleader stated that the Government has no adequate posts and in view of the interim relief granted in favour of a number of persons, prejudice is caused to the Government. He, therefore, submitted that all the matters may be ordered to be heard expeditiously. The learned Assistant Government is at liberty to move the learned Single Judge so as to enable the court to hear all the matters as expeditiously as possible.

No order as to costs.

Dt. 28.8.1997. (C.K.THAKKER J)

(S.D.PANDIT J.)
